

REMARKS

New Matter

On page 4 of the Final Office Action dated May 3, 2007, the Examiner asserts that the previous amendment to the claims, wherein Applicant added "roulette" to the preamble, constitutes new matter. The Examiner's conclusion of new matter is premised upon the Specification, page 6, lines 22-25, which the Examiner interprets as being a new type of gambling game that is not roulette. However, this passage of page 6 does not state that the game is not roulette, but rather states that the present invention incorporates playing card indicia into a roulette-like game, so as to create a new type of gambling game which uses rules similar to roulette. As further described in the specification and as shown in the drawings, Applicant's invention uses a roulette-type wheel. Thus, Applicant has amended the preamble of independent claims 1, 10 and 15 to provided for a "roulette style" game, which does not constitute new matter.

Claim Rejections Under 35 U.S.C. § 103

Claims 1, 2, 5, 6, 9-11, 15, 16, and 20 have been rejected under 35 U.S.C. § 103 as being obvious over Thompson. Claims 12-14 have been rejected under § 103 as being obvious over Thompson in view of Busch. Applicant respectfully traverses these rejections, and requests reconsideration of the claims, as amended.

Each of independent claims 1, 10 and 15 require a rotatable wheel having 49 or 50 regions. Each of the independent claims also requires that all of the regions result in constant profit. This profit limitation is supported in the specification at page 25-26, Table 4, which shows a consistent profit of 4% for a wheel having 50 regions; and page 27, Table 6, which

shows a consistent profit of 2.04% of a wheel having 49 regions. Thus, the "consistent profit" limitation added to the independent claims does not constitute new matter.

The Thompson patent fails to meet these limitations of claims 1, 10 and 15. More particularly, the Thompson wheel has 53 regions, rather than the 49 or 50 regions required by all of the claims. The Examiner asserts that it would be an obvious matter of design choice to use any number of regions up to a maximum of 54, since such a modification would involve "a mere change in the size of a component" which is generally recognized as being within the level of ordinary skill in the art. The Examiner has further asserted that the Applicant has not demonstrated the criticality for only 49 or 50 regions. However, neither "design choice" nor "criticality" are sufficient for a *prima facie* showing of obviousness. Therefore, the § 103 rejection must be withdrawn.

More particularly, the April 30, 2007 Supreme Court decision in KSR International Co. v. Teleflex, Inc., 127 S.Ct. 1727 (2007), addresses the issue of obviousness with respect to combinations of prior art references. The Supreme Court considered the teaching, suggestion, motivation (TSM) obviousness test previously relied upon by the Federal Circuit, and concluded that the TSM test is too narrow. The Supreme Court discussed obviousness in terms of the functionality of the combination. For example, in Section IIA of the Court's opinion, the Court explained that if the combination of old elements has no change in function, then the combination is obvious; arranging old elements to perform the same function is obvious; predictable use of prior art elements according to their established functions is obvious. Id. at 1739-41. In determining obviousness, the Court repeatedly referred to consideration of that which is found or known in the prior art. Id. at 1739-41. However, mere conclusory statements

cannot support obviousness, but rather, there must be some articulated reasoning with rational underpinning to support a conclusion of obviousness. Id. at 1741.

In Section IIB of the opinion, the Court further explained that merely demonstrating that each element of a combination is known in the prior art does not constitute obviousness. Id. at 1741. In Section IIC of the opinion, the Court further explained tests which can be used for obviousness: For example, one way to prove obviousness is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the claims; and when there is a design need or market pressure to solve a problem, and there are a finite number of identified, predictable solutions, it is obvious for a person of ordinary skill in the art to pursue the known options within their technical grasp. Id. at 1741-42.

Here, the Examiner has failed to meet any of these various obviousness tests set forth by the Supreme Court in the KSR decision. The Examiner has not set forth any known problems with obvious solutions, nor has the Examiner identified any need or market pressure to solve any problem relating to gambling games, and particularly, roulette style games utilized playing card indicia. Furthermore, the Examiner has cited no prior art of a roulette-type wheel having 49 or 50 regions, in accordance with the claims. In comparing the 49/50 region wheel of Applicant's invention with the 53 region wheel of Thompson, or other prior art wheels having 54 regions, there are several important differences. As seen in Table 1 on pages 23-24 of the Specification, a wheel having 53 or 54 slots has profit varying between 1.89% to 9.43%. Such a variable profitability is less than desirable for the gaming enterprise. With Applicant's 50 region wheel, the profitability is a consistent 4.0%, as shown on Table 4 at pages 25-26. With Applicant's 49 region wheel, the profitability is a consistent 2.04% as shown in Table 6 on page 27 of the

Specification. Such consistency in profitability is much simpler than a game with variable profitability, such as Thompson.

Furthermore, with Applicant's 49/50 region wheel, the payout odds are whole round numbers, which simplify the operator's work. Also, the payouts are not biased toward or away from certain types of bets, as with 53/54 region wheels, such as Thompson. In other words, with Applicant's 49/50 region wheel, the player's odds are consistent, as described in the Specification at page 26, lines 2-7, and page 28, lines 1-4. So, Applicant's game offers the player a better return than the standard roulette wheel having 54 regions, as described at page 26, lines 9-11 of Applicant's Specification.

This consistent profitability for the house, and simplified and consistent payouts are functional advantages which are not found in Thompson. While the Supreme Court's KSR decision explains that an invention having the same functionality as the prior art normally is obvious, here, where Applicant's function is different from Thompson's function, there is no basis for an obviousness conclusion.

Claims 1 and 10 also require a wagering area associated with a single operation of the rotatable wheel. Claims 10 and 15 also require a result phase for each single operation of the rotatable wheel. Thompson does not meet these limitations, since Thompson requires five or seven spins of the wheel to form a poker hand, before there is any payout on the wagering. Thus, claims 1, 10 and 15 have a further distinguishing function, as compared to Thompson. Again, as discussed above, a difference in function is evidence of non-obviousness.

Lastly, the Supreme Court's 1966 decision of Graham v. John Deere Co. requires that secondary considerations of non-obviousness, such as commercial success, must be considered when present. 383 U.S. 1, 17, 86 of S.Ct. at 684 (1966). Here, the Examiner provided no

comments regarding Applicant's considerable commercial success presented in the previous Amendment dated February 22, 2007. In particular, Applicant's game, "Royal Roulette" has proven twice as profitable on half the drop, as compared to standard roulette, as seen in the table at the bottom of the web page attached to Applicant's previous Amendment, and resubmitted here. Furthermore, Applicant's game has generated in excess of 50% of the wagering of standard roulette games. Applicant's game has other key drivers of commercial success, including simplicity, ease of implementation on the gaming floor, no dealer training required, universally recognizable format, higher house advantage of roulette, higher payouts than roulette, and the only existing alternative for both card and roulette players. Positive testimonials from players of Applicant's game also show the commercial success. See the attached two pages.

For all of the above reasons, Applicant's invention set forth in the claims distinguishes structurally and functionally over the Thompson patent, alone or in combination with Busch. Accordingly, Applicant respectfully requests that the obviousness rejections be withdrawn, and that a Notice of Allowance be issued.

Conclusion

This amendment accompanies the filing of a Request for Continued Examination (RCE). Please charge Deposit Account No. 26-0084 the amount of \$395.00 for the RCE per the attached transmittal.

Please consider this a Request for a One-Month Extension of Time from August 3, 2007 to September 3, 2007 and charge Deposit Account No. 26-0084 the amount of \$60.00 for this extension.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

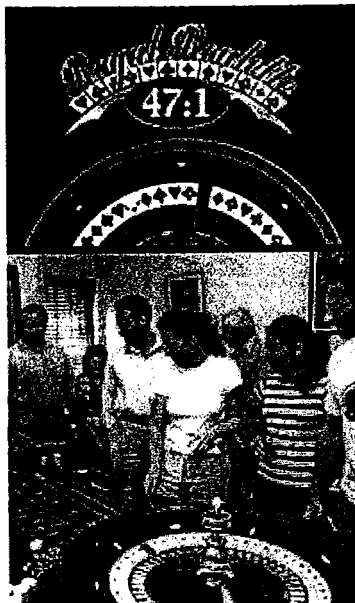
Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kirk M. Hartung", with a stylized flourish at the end.

KIRK M. HARTUNG, Reg. No. 31,021
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, Iowa 50309-2721
Phone No: (515) 288-3667
Fax No: (515) 288-1338
CUSTOMER NO: 22885

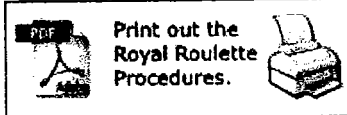
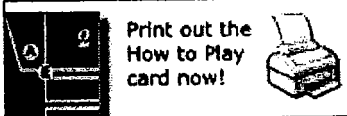
Attorneys of Record

- bjh -
Enclosure



Click here for trial and licensing enquiries.

Wheel and layout supplied for trials



International Distributors



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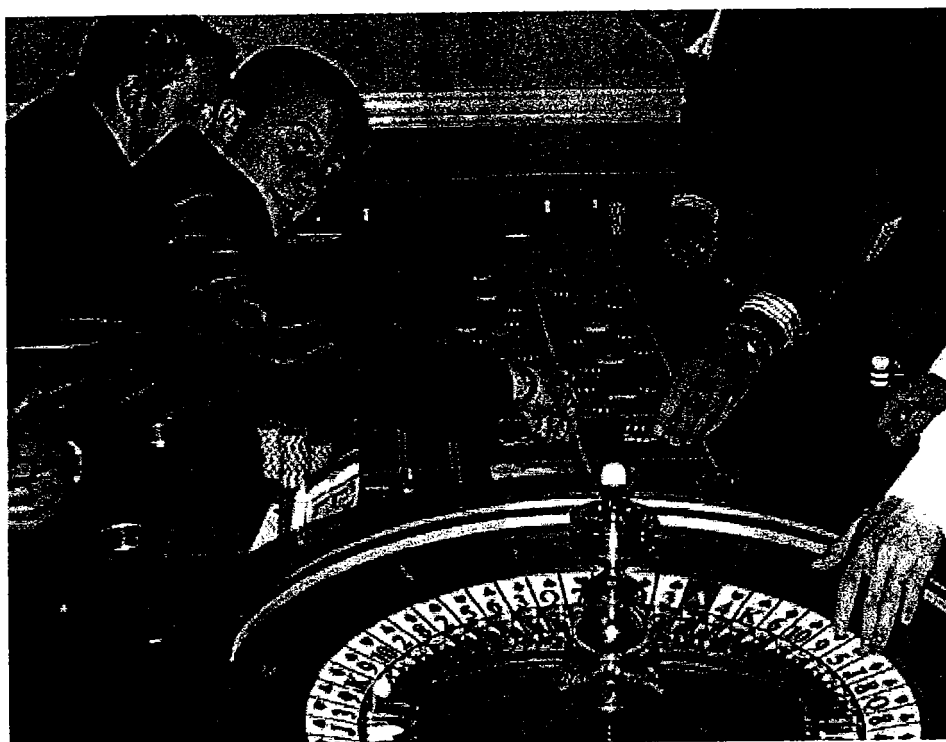
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MAYFAIR CLUB CASINO LAUNCH

- Everyone playing Royal Roulette thought it was a very exciting and simple game to play.
- Royal Roulette is the bridge between Card players and Roulette.
- Royal Roulette has the broadest player appeal of any casino game.

Royal Roulette was successfully launched at Dublin's Mayfair Club Casino. The Casino has a total of 9 tables including Royal Roulette.

The following results are excellent indicators of the game's broad appeal across all player and cultures.



Above: Live Action from the Mayfair Club, Dublin Ireland 16th June 2004

ROYAL ROULETTE TABLE RESULTS (Dublin)

Royal Roulette				Standard Roulette		
Month	Drop	House Win	Win %	Drop	House Win	Win %
June	€ 12,240	€ 4,732	39%	€ 13,964	(- € 2,108)	(-15%)
July	€ 16,595	€ 5,595	34%	€ 37,174	€ 5,137	14%
August	€ 13,315	€ 2,688	20%	€ 18,885	€ 5	0%
September	€ 16,960	€ 7,005	41%	€ 31,788	€ 7,512	24%
Total	€ 59,110	€ 20,020	34%	€ 101,810	€ 10,546	10%

- Royal Roulette proved twice as profitable on half the drop as Standard Roulette.

- After only 2 weeks Royal Roulette represented 28% of the casinos gross monthly profit.
- Royal Roulette had up to a 41% monthly hold, while maintaining a 4 month average of 34%.
- New and novice players understood and adopted Royal Roulette immediately.
- Royal Roulette developed a regular following among:
 - Roulette players, both male and female playing for hours at a time, while enjoying the larger payouts
 - Black Jack players, who consistently placed 2-3 bets every shuffle, proved the addictive nature of Royal Roulette (perceived it as a card game).
 - All players preferred the familiar card symbols and found the game very easy to understand and play.
- Roulette dealers recognized the layout and made payouts with ease, resulting in dispute free gaming.
- Royal Roulette created an air of excitement for both members and dealers.

PROVEN KEY DRIVERS

- Royal Roulette is simple and uncomplicated (players and dealers alike).
- Easy to implement on the gaming floor.
- No dealer training required.
- Universally recognizable format.
- Simple introductory game for new players, everyone has played cards.
- 50% higher house advantage than Roulette.
- Payouts are 33% higher than standard Roulette.
- Only existing alternative for both card and Roulette players.

PLAYER COMMENTS

"Now that I have played Royal Roulette I cannot imagine going back to numbers."
- Doris

"The familiarity of cards give the game a personality, unlike numbers the cards have meaning."
- Michael

"It's the next Roulette."
- Rhonda

"If I had a choice I'd play Royal Roulette over standard Roulette because of the personality a card has. When your card comes up it's much easier to see in your mind a Jack of hearts than the number 26."
- Pete

"Cards give the game a buzz but the bigger payouts are an even bigger buzz."
- Arthur

"In standard Roulette you stand in front of 37 numbers that really have no meaning to me, but Royal Roulette only has 12 perceived cards in front of you. It seems much cleaner and not so busy on the mind."
- Julie

"Roulette has 37 numbers looking at you but here with Royal Roulette I know what the cards mean."
- David

"We love it , just love it, more money and more number 8's."
- Asian Roulette Player in Dublin

"It's very interesting, I never played Roulette but I understand this, it makes sense to bet on cards not numbers."
- Blackjack Player in Dublin